

July 2015

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Roxanne L. B. Clemens
Iowa State University, rclemens@iastate.edu

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Recommended Citation

Clemens, Roxanne L. B. (2015) "Geographical Indications, the WTO, and Iowa-80 Beef," *Iowa Ag Review*: Vol. 11 : Iss. 2 , Article 4.
Available at: <http://lib.dr.iastate.edu/iowaagreview/vol11/iss2/4>

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Geographical Indications, the WTO, and Iowa-80 Beef

Roxanne Clemens

rclemens@iastate.edu

515-294-8842

In August 2003, the United States and Australia asked the World Trade Organization (WTO) to convene a panel to resolve an ongoing dispute concerning geographical indications (GIs). In simple terms, the United States and Australia charged that E.U. rules governing the registration of GIs discriminate against third-country GI products (national treatment) and fail to protect U.S. trademarks. Given the range of sub-issues covered in the dispute, it is perhaps not surprising that the WTO panel's March 2005 ruling left both sides claiming victory.

LEVELING THE E.U. PLAYING FIELD

The European Union has invested a great deal of political and economic capital in promoting the use of GIs to encourage producers to abandon commodity production in favor of producing high-quality, high-value agricultural products associated with geographical location. One measure of the success of these investments is the approximately 700 GIs (excluding wines and spirits) currently registered in the European Union and the continuous stream of applications to register more products.

Whereas the United States incorporates protection of GIs within its trademark system, the European Union uses both a trademark system and a separate system to protect GIs. As members of the WTO, both are covered by WTO rules. The WTO panel was convened to determine whether the dual system of the E.U. violates the rights of non-E.U. WTO members. The WTO authorizes the use of GIs among its members to protect products with unique attributes linked to well-defined geographic areas from com-



Certification mark submitted to the U.S. Patent and Trademark Office for Iowa-80 Beef

petition from similar products. GI protection is spelled out in the Agreement on Trade-Related Aspects of Intellectual Property Rights, or TRIPS Agreement, and the European Union has consistently fought to strengthen the protections for GI products under this agreement. However, the United States, Australia, and other WTO members have charged that the European Union's own regulations include equivalence and reciprocity conditions that prevent full protection of third-country GI products. In short, the WTO panel was asked to evaluate whether GI registration, recognition, and protection under EC Council Regulation No. 2081/92 violate the TRIPS Agreement.

Among the issues in the WTO case are E.U. requirements that non-E.U. countries adopt E.U. inspection systems in order to register their GIs in the European Union; requirements that non-E.U. governments be involved in verifying and transmitting applications to register GIs; and limits on the ability of individuals or groups from non-E.U. countries to submit objections to GI registrations. The European Union argued that transmittal of applications is a modality of the registration process, which the United States did not show was unreasonable or inconsistent with the TRIPS Agreement. The

European Union further argued that Article 22.2 of the TRIPS Agreement does not confer a right to object to the registration of a GI and that, even if that right were conferred, requiring that non-E.U. governments transmit the objections is neither excessive nor unreasonable.

WHO WON WHAT?

The panel confirmed that the rights of U.S. trademark owners could not be limited by GI regulations, except in very specific and narrowly defined circumstances. The European Union can protect registered GI names but cannot protect all the linguistic variations of that name—some of which may be brand names from other countries. The panel ruled that Regulation No. 2081/92 violates the TRIPS Agreement with respect to the requirement that applications be submitted by governments, the requirement that objections be submitted through governments, and the requirement that governments participate in inspection procedures. The panel suggested that the regulation be amended. On the other hand, the panel ruled that the European Union does not violate Article 22.2 of the TRIPS Agreement by allowing the “coexistence” of GIs and prior trademarks with similar names. In other words, GIs are compatible with non-E.U. trademark systems and their trademarks. Thus, the panel's ruling upheld some of the arguments from both sides.

DEVELOPING A GEOGRAPHIC-BASED BRAND FOR IOWA BEEF

Given the differences in systems for branding products based on geographical linkages among WTO member-countries, disagreements will continue to require resolution. Despite these disputes over the methods of protection, however, many countries agree on the value of branding and promoting high-

value agricultural products based on geographical linkages. Building on a body of research revealing the benefits of GIs, product branding, and animal identification, a recent collaboration between the Center for Agricultural and Rural Development and the Iowa Beef Center at Iowa State University seeks to use Iowa's long-held reputation for excellence in producing high-quality, corn-fed beef to increase the profitability of Iowa beef producers by developing a branded beef associated with the state. The creation of such a brand is now underway.

Iowa's reputation has been built on the state's abundance of corn for long-fed beef and cattle producers' use of genetics that allow cattle to produce well-marbled beef at a young age, which promotes tenderness. These traits are especially important in high-value niche markets in the United States and in countries such as Japan, where consumers value well-marbled, tender beef. Japanese importers have long referred to high-quality corn-fed beef from the United States as "I-80 beef" because Interstate 80 provides a rough landmark of the geographic area where much U.S. corn-fed beef is produced. To build on this existing identification of high-quality beef in the most important export market for U.S. beef, "Iowa-80 Beef" was chosen as the brand name.

In addition to the geographical linkage, Iowa-80 Beef will include attributes that international and

domestic consumers are increasingly using to define high-quality beef. Ensuring uniform production methods and the appropriate use of the brand will allow Iowa beef producers to label consistently high-quality beef products and will allow consumers to readily identify and purchase Iowa-80 Beef.

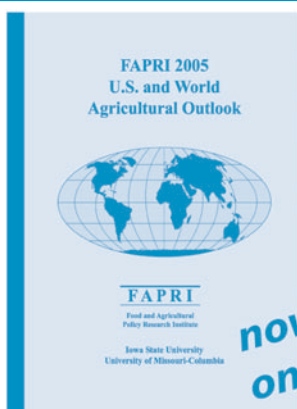
The process of developing and branding Iowa-80 Beef involves concurrent submissions to two separate government entities. One part of the process is to register for a certification mark with the U.S. Patent and Trademark Office (USPTO). For Iowa-80 Beef, a certification mark is more useful than a standard trademark because, once approved, the certification mark can be used to label beef from any Iowa producer who is willing to follow the production specifications for Iowa-80 Beef. The Iowa-80 Beef brand cannot be sold, and registration through the USPTO includes full rights to legal recourse for trademark infringement.

The second part of the process is to document the production and processing systems for Iowa-80 Beef and acquire certification of these systems through USDA's Agricultural Marketing Service (AMS). The Iowa-80 Beef specifications are being set intentionally high to differentiate this beef as a high-value, premium product. If the Iowa-80 Beef program specifications are accepted by USDA, the cattle from which Iowa-80 Beef is produced will be individually identified, trace-

able to the calf producer, age-verified, and fed corn or corn co-products for a minimum number of days in Iowa feedlots. At the processing stage, carcasses from Iowa-80 Beef animals will be carefully segregated and will have to meet minimum grade requirements for one of two quality levels: carcasses that grade in the top one-third of Choice or Prime and those that grade mid-Choice.

To fully protect and promote Iowa-80 Beef, both a U.S. certification mark and a USDA-approved certification program are necessary. The USDA-AMS can certify the production and processing systems but cannot protect the rights of producers against brand-name infringement. The USPTO certification mark provides legal protection for Iowa-80 Beef producers by certifying "...that the goods in connection with which it is used are produced and processed according to specifications that include individual animal identification, genetics, ration and number of days on feed in an Iowa feedlot, maximum age of steers and heifers at harvest, official USDA beef grades, and minimum number of days the beef is aged."

This project is ongoing, and we are awaiting approval of our applications for the Iowa-80 Beef certification mark from the USPTO and an Iowa-80 Beef certification program by USDA-AMS. As work on this project progresses, updates can be found at www.card.iastate.edu/i80beef. ♦



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